IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 892 of 1984
with
CROSS OBJECTION No 118 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADAVJI BHAGWANT SOLANKI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:
1. First Appeal No. 892 of 1984
MR KV SHELAT for Petitioner No. 1
MR MD PANDYA for Respondent No. 1-absent
MR ASPI KAPADIA for MR SB VAKIL for Respondent No. 2-3
2. CROSS OBJECTION No. 118 of 2002
MR MD PANDYA for Petitioner No. 1
..... for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 21/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Appellant Jadavji Bhagwant Solanki has filed this First Appeal and challenged the impugned common Judgment and Award dated 12.9.1983 passed by the learned M.A.C. Tribunal (Main), Ahmedabad (Rural), whereby the learned Tribunal decided three M.A.C.T.Case No.668/81, 610/81 and 58 of 1982. The present appellant was the claimant of M.A.C.T. Case No.668 of 1981.

2. The appellant - claimant was travelling in S.T.Bus of the Corporation. The said bus collided with Truck No. GTY 4044 carrying iron Bars. Due to accident the claimant received serious injuries on his left leg for which initially he was shifted to VS Hospital and kept as Indoor patient for 6 to 7 days, but he was not satisfied with the treatment given to him in VS Hospital, Ahmedabad, and therefore, he got himself admitted in private Hospital and remained in Hospital for about 45 days. As per the evidence of Doctor he had suffered 45 % disability on account of injury received by him during the accident. He claimed that his income was Rs.20,000/to Rs.25,000/- per year. He was business man and travelling at different places like Delhi, Mumbai and Madras, but after the accident he was unable to travel because of his injuries. In his claim petition he has claimed in all Rs.2 lacs for pecuniary as well as non-pecuniary loss. Learned Tribunal, however, awarded in all only Rs.70,180/- on different heads. Aggrieved of this Award, the Appellant has filed this Appeal, however, he has restricted his claim to Rs.40,000/- in Appeal. Thus, in all he has claimed Rs.1,10,180/-.

3. We have carefully gone through the entire, oral as well as documentary, evidence on the record of the case and the impugned common judgment and Award passed by the learned Tribunal and the reasons assigned in it.

4. The claimant has claimed that his yearly income was between Rs.20,000/- to Rs.25,000/-. However, he has clearly stated in his evidence that he used to pay Income-tax on the income of Rs.13,900/-. However, learned Tribunal has completely missed this evidence which was remained unchallenged in the cross examination and without considering the same the learned Tribunal came to the conclusion that his income could be assessed at Rs.12,000/- per year. Learned Tribunal also came to the conclusion that though the Doctor has stated that, according to his assessment, the claimant suffered 45 % disability, but it can be assessed at 40 %. Accordingly, on the basis of 40 % disability incurred by the claimant the learned Tribunal considered economic loss of Rs.4800/- and applying multiplier of 8, the learned

Tribunal Awarded Rs.38,400/-. Looking to the age of the claimant at the time of accident we are of the considered opinion that the learned Tribunal has not committed any error in applying multiplier of 8, because the claimant was 52 years old at the time of accident. However, when there is authentic evidence that he was paying income tax on the income of Rs.13,900/- then we are of the considered opinion that the learned Tribunal committed an error in coming to the conclusion that his yearly income was only Rs.12,000/-. We take the round figure and accordingly we assess the yearly income of the claimant at Rs.14,000/-. Out of that 40 % is considered as disability then also it would come to Rs.5600/- and applying by 8, the claimant would be entitled to Rs.48,800/- instead of Rs.38,400/- awarded by the Tribunal. Accordingly, we award the additional sum of Rs.10,400/- on this head of economic loss.

5. Learned Tribunal has awarded only Rs.22,000/- to the claimant for pain, shock and suffering which is, in our considered opinion, too less. The fact that the claimant received serious injuries on his left leg and he had to remain in Hospital for nearly 2 months on different occasion and inspite of the treatment being taken water was oozing from his leg when he deposed before the Tribunal and the fact that he was given blood transfusion after the accident, in our considered opinion, he would be entitled for Rs.35,000/- and not Rs.22,000/- which is awarded by the Tribunal for pain, shock and suffering. Accordingly, we award additional amount of Rs.13,000/- on this head of pain, shock and suffering and in all we award Rs.35,000/- on this head.

6. The claimant has produced bills regards treatment and the medicine. Inspite of that the Tribunal has awarded only Rs.4280/-. We are of the opinion that the claimant is entitled for found figure of Rs.5000/- and accordingly we award Rs.5000/- in all. Thus, on this head of treatment and medical expenses he is awarded Rs.720/- more.

7. The learned Tribunal has awarded Rs.1000/towards transportation charges which we are not inclined to interfere. Similarly, we are not inclined to interfere with the additional amount of Rs.4500/- awarded to the claimant for loss of income for 6 months as he has to take rest during that period.

8. Thus, the claimant is entitled to additional sum of Rs.24,120/- in this Appeal. Accordingly, we partly allow this Appeal and held that in all the claimant was entitled to Rs.94,300/-. He has already been awarded Rs.70,180/- by the learned Tribunal and therefore he is entitled for additional amount of Rs.24,120/-. He shall

recover the same from all the opponents together with interest thereon at the rate of 6 % p.a. from the date of filing of Application till the payment of realisation with proportionate cost. We make it clear that we do not incline to interfere with the S.T.Corporation liability fixed by the learned Tribunal by 65 % and the Insurance Company liability to 35%. However, the claimant would be entitled to recover awarded amount in this proportion from the present opponents. Hence, in our considered opinion, the learned Tribunal has rightly assessed the contributory negligence at the rate of 65% and 35 %of the Bus driver as well as truck driver respectively.

9. In view of the above discussion this Appeal is partly allowed with cost to the aforesaid extent only.

10. As the Appeal is partly allowed, the Cross Objection filed by the S.T. Corporation have to be dismissed and accordingly they are dismissed with costs.

(B.J.Shethna, J.)

Date : November 21, 2002

(Kundan Singh,J.)

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